

1 JEAN E. WILLIAMS  
2 Deputy Assistant Attorney General  
U.S. Department of Justice  
Environment & Natural Resources Division

3  
4 SALLY J. SULLIVAN (DC Bar No. 1021930)  
5 Trial Attorney  
U.S. Department of Justice  
6 Environment & Natural Resources Division  
Natural Resources Section  
7 4 Constitution Square  
150 M Street NE  
8 Washington, DC 20002  
Tel: (202) 514-9269  
9 Fax: (202) 305-0506  
sally.sullivan@usdoj.gov

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11 *Attorney for Defendants*

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13                   **UNITED STATES DISTRICT COURT**  
14                   **NORTHERN DISTRICT OF CALIFORNIA**  
                     **SAN FRANCISCO DIVISION**

15 ENVIRONMENTAL PROTECTION  
16 INFORMATION CENTER,

17 Plaintiff,

18                   v.

19 ANN CARLSON, in her official capacity  
20 as the Forest Supervisor of the Mendocino  
National Forest; and the UNITED STATES  
21 FOREST SERVICE,

22                   Defendants.

23 Case No. 3:19-cv-6643-EMC

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25  
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28 **DECLARATION OF ANN D. CARLSON**  
**IN SUPPORT OF DEFENDANTS'**  
**RESPONSE IN OPPOSITION TO**  
**PLAINTIFF'S MOTION FOR A**  
**TEMPORARY RESTRAINING ORDER**  
**[ECF No. 18]**

1 I, Ann D. Carlson, pursuant to Title 28, United States Code, Section 1746, declare as  
2 follows:

3 1. I am the Forest Supervisor for the Mendocino National Forest (Forest), which  
4 includes portions of the Berryessa Snow Mountain National Monument (Monument). Please  
5 refer to my declaration filed in Opposition to Plaintiff's Motion for Preliminary Injunction on  
6 November 1, 2019 for additional information about myself and my role as Forest Supervisor. I  
7 make this declaration of my own personal knowledge and based on my discussion with my  
8 staff, and I could and would testify to the truth of the facts stated herein if called upon to do so.

9 2. I have reviewed Plaintiff's Motion for Temporary Restraining Order and  
10 supporting declarations, and I make this declaration in part to respond to certain allegations  
11 contained in the Second Declaration of Kimberly Baker.

12 3. As I stated in my earlier declaration, I authorized the Ranch Fire Roadside  
13 Hazard Tree Project, through a series of categorical exclusion authorizations, to address the  
14 serious safety concerns posed by the numerous hazardous trees left behind by the Ranch Fire,  
15 by removing roadside hazard trees with potential to strike the roadway, thereby restoring safe  
16 access to Forest road users.

17 4. The primary purpose of the Project is to reduce current and potential safety  
18 hazards along roads to create a safe transportation system for employees, contractors,  
19 firefighters, private landowners, and the public. The hazard trees need to be removed; simply  
20 dropping the hazard trees and without removal, or with only relocation to decks and landings,  
21 would result in excessively high surface fuel loading along the roadways and greatly increase  
22 the risk and severity of another fire. Moreover, as I described in my earlier declaration, it would  
23 be cost-prohibitive for the Forest to treat all of the hazards itself, as we lack the equipment and  
24 the crews to safely fall and relocate all of the identified trees. For these reasons, the Project  
25 plans to remove hazard trees through a series of salvage sales.

26 5. In her Second Declaration, Ms. Baker contends that the Project "would greatly increase  
27 habitat fragmentation and may significantly harm the threatened and sensitive species,"

1 including the Northern spotted owl (NSO). *See* Second Baker Decl. ¶ 10. However, these  
2 claims are unfounded. Prior to the Ranch Fire, the Project area contained approximately 4,500  
3 acres of suitable NSO habitat, including nesting/roosting, foraging, and dispersal habitat.  
4 Following the devastating effects of the fire, only approximately 3,000 acres of suitable habitat  
5 remained in the Project area. It was the Ranch Fire that increased habitat fragmentation and  
6 caused significant harm to the NSO, not this important safety project that is occurring only in  
7 linear corridors adjacent to already disturbed National Forest system roads. Forest Service  
8 specialists carefully examined the impacts of the Project on the NSO, including informally  
9 consulting with the U.S. Fish and Wildlife Service (USFWS) where necessary, and determined  
10 that there will be no effect on the NSO or its critical habitat in the Bartlett and Deer Valley  
11 areas, and may affect, but is not likely to adversely affect, the NSO or its critical habitat in the  
12 M3, M5, Felkner and M10 areas. These determinations were reached based on the  
13 implementation of limited operating periods (LOPs) in portions of the Project area from  
14 February 1 to July 31, in order to restrict noise and smoke producing activities that could occur  
15 within 0.25 mile of surveyed nesting/roosting habitat during the NSO's breeding season.  
16 Moreover, the Project retains large trees and downed wood within the project area, hazard tree  
17 removal activities do not downgrade any suitable or critical habitat remaining post-fire in those  
18 areas, and the Project retains green trees that would contribute to NSO habitat. An LOP is also  
19 in effect in some parts of the project for Pallid and Townsends's big-eared bats from May 1  
20 through August 15.

22       6. Due to the linear nature of the Project along roads and the abundance of dead  
23 trees outside the Project boundaries, removal of dead trees along roadways will not result in  
24 adverse impacts to NSOs seeking burned habitats for foraging.

25       7. Moreover, design features and best management practices are identified for all  
26 Project timber sales. These include LOPs that will be implemented on all timber sales in areas  
27 identified by Forest Service Wildlife Biologists. Design features are also identified for  
28 hydrology, erosion prevention and control, aquatic and streamside management zones, ground-

1 based skidding and yarding operations, water drafting, fisheries, geology, heritage resources,  
2 botany and invasive plants. Examples of additional design features identified for the Project  
3 include retaining at least 50% ground cover across all treatment areas and felling trees  
4 perpendicular to roads to minimize the skidding lengths, to ensure resources are protected  
5 throughout implementation. These features are included in the NEPA Compliance Checklist for  
6 each project.

7       8.      The Operator and Sale Administrator work together to ensure design features and  
8 best management practices are implemented as identified by the Forest Service resource  
9 specialists. With the implementation of these design features, the Project will not “adversely  
10 affect[] threatened species, water quality and [] increase the spread of invasive plants,” as Ms.  
11 Baker suggests. *See Second Baker Decl. ¶¶ 7, 11.* To the contrary, the design features and best  
12 management practices are implemented to specifically avoid the impacts Ms. Baker complains  
13 of.

14       9.      Ms. Baker also expressed concern about the removal of allegedly live trees in  
15 Late Successional Reserves (LSRs), NSO Activity Centers, and NSO Critical Habitat. *See*  
16 Second Baker Decl. ¶ 9. However, many areas that once had late successional characteristics  
17 before the fire are no longer considered suitable for NSO nesting/roosting due to changes from  
18 the fire. For example, on the Bartlett timber sale there are two 100 acre Late Successional  
19 Reserves (LSRs) that fall within the Bartlett project boundary. After field visits with USFWS it  
20 was determined that the two 100 acre LSRs had almost 100% tree mortality. Therefore there is  
21 no longer any viable nesting/roosting NSO habitat within these LSRs to preserve.

22       10.     There are also three NSO Activity Centers associated with these LSRs. Based on  
23 the fact that post-fire there is no longer any viable nesting/roosting NSO habitat left within the  
24 LSRs or within or adjacent to the Activity Centers, USFWS has determined that the Activity  
25 Centers have been abandoned due to loss of habitat. There is no designated Critical Habitat  
26 within the Bartlett project area.

1     **Harm to the Forest Service and the Public Due to Delay From a Temporary Restraining  
2     Order**

3         11.     As I stated in my earlier declaration, because of the LOPs and rainy season  
4     limitations, the optimal hazard tree removal season is August through November. With the  
5     onset of winter, timber operations and use of roads is weather-dependent. In December snow is  
6     likely in the M5/Pacific area. Snow could mean the shut-down of hazard tree removal  
7     operations until spring. Equipment sitting idle is not good for anyone, especially a purchaser.  
8     The expense of moving equipment is so high that it is unlikely that the purchaser would come  
9     back because of the extensive deterioration of the wood, and they could possibly be released  
10    from their contract to cut their losses as a result. Therefore, if a TRO were granted and hazard  
11    tree removal operations were to remain shut down until the Court rules on Plaintiff's Motion for  
12    Preliminary Injunction in late December, the delay in implementation until December would  
13    result in significant harm to the Forest, private landowners and all Forest visitors, as well as jobs  
14    and revenue losses to the timber sale contractors. With winter season making operations  
15    difficult to impossible after December, and with the LOPs beginning in February, operations  
16    may not realistically be able to resume until August of 2020.

17         12.     Ceasing removal of hazard trees along roadways within the Ranch fire area will  
18     leave trees that might fall onto the roadway and injure or kill people. This is a very serious risk  
19     that the Forest needs to mitigate as quickly and efficiently as possible. As the Declaration of  
20    Tony Saba filed herewith illustrated, a hazard tree designated for removal fell across the road on  
21    October 27, 2019 during a strong wind event.

22         13.     Moreover, as I also described in my earlier declaration, closing the Forest roads  
23     to minimize risks to users is not practical because Forest management needs to occur, private  
24     landowners need to access their land, and hunters and Forest visitors want access to their public  
25     lands.

26         14.     Now is the time to remove the dead and dying trees. If we wait even two weeks  
27     to treat the hazards, the trees will continue to deteriorate and lose whatever value they currently

1 have to the logging industry who has the equipment and is willing to purchase and remove them  
2 from the roadways. Timber deterioration with the Project area is being exacerbated by an  
3 increase in insects and disease that feed on and break down the trees killed or injured by fire. As  
4 time passes, the Forest is constantly having to adjust downward the estimates made just months  
5 ago due to this ongoing rapid loss of volume.

6 15. The Forest Service simply does not have the capacity to drop and remove all the  
7 dead and dying trees along these important access roads on the Forest; we need the assistance of  
8 professional timber sale contractors.

9 16. Timber receipts for roadside hazard tree removal thus far are approximately  
10 \$83,000. If the Forest Service does not utilize industry to help with the hazard tree removal  
11 effort it would cost approximately \$1,400,000 to abate the risks in the Bartlett and M5/Pacific  
12 Project areas alone.

13 17. Bartlett operations are ongoing and we anticipate up to 8 weeks of work  
14 remaining on the sale. The purchaser currently has felled logs still on the ground. If they are  
15 shut down, they will lose the investment in time and money they made to fall the timber, and if  
16 the wood is left on the ground for a prolonged period of time, it will break down at a rapid rate  
17 and may not be suitable to be shipped to the mill. The purchaser would ultimately lose the cost  
18 of felling the timber because they could not redeem the value of the product. The purchaser of  
19 M5/Pacific has moved their equipment onto the sale area and has requested to start cutting and  
20 removing the dead and dying trees on Monday November 4, 2019. If they were to be shut down  
21 next week, they would be harmed by the additional move out and potentially move back in costs  
22 that they would incur.

23  
24  
25 I declare under penalty of perjury that the foregoing is true and correct.  
26

27 Executed this 1<sup>st</sup> day of November, 2019, in Willows, California.  
28

An. D. Carl

ANN D. CARLSON  
Forest Supervisor  
Mendocino National Forest  
United States Forest Service

**DECLARATION OF ANN D. CARLSON  
CASE NO. 3:19-CV-6643-EMC**